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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 724 57

NORTHERN BUILDING AND LOAN ASSOCIATION,
Appellant,

v.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH,
AS THE BANKING COMMISSION OF THE BANKING DEPARTMENT
OF THE STATE OF WISCONSIN ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT AS TO JURISDICTION.

JOHN H. SCHLINTZ,
EMERY J. WOODALL,
LYMAN W. SHERWOOD,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 972

NORTHERN BUILDING AND LOAN ASSOCIATION,
A CORPORATION,
Plaintiff and Appellant,

v.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, AS THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN, AND CLYDE P. DIGGLES, SUPERVISOR OF BUILDING AND LOAN ASSOCIATIONS OF THE BANKING COMMISSION OF THE STATE OF WISCONSIN,
Defendants and Appellees.

STATEMENT AS TO JURISDICTION.

MAY IT PLEASE THE COURT:

Pursuant to Rules 12 and 46 of the Supreme Court of the United States, Northern Building and Loan Association, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, appellant in this appeal from a decision of the Supreme Court of the State of Wisconsin, made in the above cause, respectfully shows the following in support of the jurisdiction of the Supreme Court

of the United States to review the aforesaid cause on appeal:

A.

Statutory Provisions Sustaining Jurisdiction.

The Act of Congress approved January 31, 1928, Chapter 14; 45 Stat. 54; U. S. C. Supp., Title 28, Sec. 861a, provides:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress approved April 26, 1928, Chapter 440; 45 Stat. 466; U. S. C. Supp., Title 28, Sec. 861b, provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The Act of Congress approved February 13, 1925, Chapter 229; 43 Stat. 936; U. S. C. Title 28, Sec. 344(a), amends subsection (a) of Section 237 of the Judicial Code, so that the same provides as follows:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court

upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

Statute of the United States, Section of the Constitution of the State of Wisconsin, and Statutes of the State of Wisconsin, the Validity of Which are Involved.

Section 5 of the Act of Congress approved June 13, 1933; 48 Stat. 128, at page 132, as amended by the Act of Congress approved April 27, 1934; 48 Stat. 643; U. S. C. Supp., Title 12, Sec. 1464, provides:

"Sec. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation, of associations to be known as "Federal savings and loan associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

"(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

"(c) Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and

business property within fifty miles of their home office; *Provided*, That not more than $20,000 shall be loaned on the security of a first lien upon anw one such property; except that not exceeding 15 per centum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon: *And provided further*, That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal home-loan bank.

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

"(e) No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

"(f) Each such association, upon its incorporation, shall become automatically a member of the Federal home-loan bank of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a Federal home-loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

"(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for pre-

ferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one-third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the

shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local or mutual or cooperative thrift and home financing institutions.

"(i) Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

"(j) In addition to the authority to subscribe for preferred shares in Federal Savings and Loan Associations, the Secretary of the Treasury is hereby authorized on behalf of the United States to subscribe for any amount of full paid income shares in such association, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the

approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.

"(k) When designated for that purpose by the Secretary of the Treasury, any Federal Savings and Loan Association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal Savings and Loan Association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.

Section 1 of Article XI of the Constitution of the State of Wisconsin provides:

> "Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts enacted under the provisions of this section may be altered or repealed by the legislature at any time after their passage."

Chapter 215 of the Wisconsin Statutes, 1933, contains the law of the State of Wisconsin relative to the creation, operation, supervision, and termination of Wisconsin Building and Loan Associations.

Section 215.07 of such Chapter, granting powers to such associations, provides as follows:

> "215.07 Powers. Such local associations shall have power
>
> "(1) To issue stock to members; to assess and collect from members fees, dues, fines, interest, premiums and other charges, and the same shall not be held to be usurious; to permit or force members to withdraw all or part of their stock; to make loans to members; all upon such terms and conditions as may be provided in the by-laws. • • •
>
> "(5) To exercise all such powers as are necessary and proper to enable them to carry out the purpose of their organization. • • •
>
> "(7) With the advice and approval of the commissioner of banking, to become a member of and/or to subscribe for and purchase notes and debentures issued by any federal finance or credit corporation which may be organized by act of Congress for aiding and assisting building and loan associations to utilize their resources and credit, or to borrow from such

finance or credit corporation, in either case in an amount not exceeding that allowed under the provisions of subsection (6) of this section.

"(8) With the approval of the commissioner, any association may borrow money from the federal home loan bank upon such terms and for such time as the laws and rules of such federal home loan bank may prescribe, the provisions in subsection (2) of section 215.07 as to the one-year time limit and as to the amount that my be borrowed, to the contrary notwithstanding."

Section 215.335 gives to state building and loan associations power to consolidate with other associations, located in the same county, with the consent of the commissioner of banking. A majority vote of the board of directors of each association, ratified and confirmed by affirmative vote of the shareholders of each such association owning at least ⅔ of the shares outstanding, at a meeting of such shareholders to be held on call of the directors, after sending notice of the time, place and object of the meeting to each shareholder of record by registered mail at least thirty days prior to said meeting, is required for consolidation.

Section 215.36, dealing with the dissolution of such associations, provides as follows:

"215.36. Dissolution (1) Any association organized or doing business under the provisions of this chapter may go into liquidation or may dissolve such association by a two-thirds vote of all its outstanding authorized capital stock at a stockholders' meeting held especially for that purpose after notice to each stockholder of not less than thirty days. Whenever an association has so voted to go into liquidation or to dissolve, it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association by its president and secretary,

to the commissioner of banking, and to cause notice thereof to be published once each week for eight successive weeks in a newspaper published in the village, city or county in which the association is located, and if no newspaper is there published, then in a newspaper published at the nearest county seat, calling on all persons who may have claims against such association to present their claims to the association and make legal proof thereof at a place and within a time, not earlier than the last date of publication, to be therein specified, and to mail a similar notice to all persons whose names appear as creditors on the books of the association * * *."

C.

Date of Judgment and of the Petition for Appeal.

The Supreme Court of the State of Wisconsin affirmed, by judgment entered May 1st, 1935 (R. 147), the judgment of the Circuit Court of Milwaukee County of the State of Wisconsin entered March 9, 1935 (R. 130-133). Over objection of appellant, said Circuit Court had entered such judgment pursuant to remittitur of said Supreme Court in accordance with the decision of said Supreme Court, filed December 11, 1934 (R. 104-121), which had reversed, upon an appeal by appellees herein, the earlier judgment, entered September 12, 1934 (R. 98), of said Circuit Court in favor of appellant herein. A motion for rehearing was filed in said Supreme Court December 20th, 1934 (R. 124), within the time fixed by the rules of said Supreme Court (R. 34). Such motion for rehearing was denied by order of said Supreme Court entered on February 5th, 1935 (R. 125a).

The original judgment of said Circuit Court was entered on September 12, 1934, pursuant to the decision of said Circuit Court (R. 84-96) filed on the same day.

The decision of the Supreme Court of the State of Wisconsin (R. 104-121), filed December 11, 1934, upon the first

appeal from said Circuit Court, is reported in the official reports of said Supreme Court in —— Wisc. —— and in 257 N. W. 684.

The Petition for Appeal from the Supreme Court of the State of Wisconsin to the Supreme Court of the United States was allowed by the Chief Justice of the Supreme Court of the State of Wisconsin on May 1st, 1935 (R. 6-7) and filed in the office of said Supreme Court on the same day.

D.

Nature of Case and Ruling Below.

Appellant (Plaintiff below) by its original bill (R. 45-52) in the Circuit Court of Milwaukee County, State of Wisconsin, prayed as follows:

> "1. That an order be issued temporarily restraining and enjoining said defendants, and each of them, their employees, agents and representatives, from seizing, taking possession of, carrying away, keeping or retaining any of the property, books of accounts, records, or assets of said plaintiff, and from interfering with the conduct and management of the business of said plaintiff Association.
>
> "2. That said defendants, and each of them, their employees, agents and officers, be restrained and enjoined from interfering with the officers, directors or stockholders of said plaintiff Association, and with any meeting or meetings of said officers, directors or stockholders called for the purpose of considering, determining and voting upon the lawful business and affairs of said plaintiff Association, and more particularly aforementioned proposed conversion.
>
> "3. That said defendants, and each of them, as such Banking Commission and Supervisor of Building and Loan Associations of Wisconsin, their employees, agents and representatives be permanently restrained

and enjoined from interfering with the property and lawful conduct and business of said plaintiff.

"4. That plaintiff have such other and further relief as may appear just and equitable in the premises."

Appellant prayed for said relief on the following grounds:

1. That, as appellant was informed and verily believed, during the process of a conversion, similar to appellant's proposed conversion, from a state corporation to a federal savings and loan association on part of the West Lawn Building and Loan Association, located at Racine, Wisconsin, appellees (defendants below) threatened to seize and take over the business of said association by taking possession of its office, books and records, by threatening to oust the Board of Directors, by interfering with stockholders' meetings and attempting to influence stockholders' meetings, and by threatening that if its proposed special stockholders' meeting were not adjourned or dismissed, appellees would take over all of the property of said association; however, appellees, and each of them, were enjoined by order of the Circuit Court of Racine County, Wisconsin, from interfering with said association and its proposed meeting and conversion.

2. That, as appellant was informed and verily believed, immediately upon receipt of information of the proposed conversion by appellant and of the proposed meeting of its stockholders, appellees intended to seize and take over the affairs, business, property and assets of appellant and to interfere with and prevent the proposed meeting of its stockholders, contrary to law and the statutes; and without cause, excuse or justification that appellees had threatened and would proceed to oust the officers and directors and to take possession of the business, assets and operation of each building and loan association of the State of Wisconsin which might attempt or take any steps toward converting into a federal savings and loan association,

and more particularly, the appellant, for no other cause, purpose, reason or excuse than merely the fact of such attempted and proposed conversion.

3. That appellant was not violating and never had violated its charter, by-laws, or any law under which it operated or the direction or orders of the Banking Department or the Banking Commission or the Supervisor of Building and Loan Associations of the State of Wisconsin; that the affairs of appellant were in sound condition, its business conducted in a safe and authorized manner, its capital wholly unimpaired, and appellant was and had been at all times a solvent and going concern, and that there was no valid reason, cause or excuse, and no legal or equitable grounds for appellees to take possession of appellant; that all the assets, books of account, records and proceedings of appellant, including both real and personal property, were located within the County of Milwaukee, State of Wisconsin; and that such proposed and threatened seizure and control by appellees was contrary to the judgment and will of the officers, directors and stockholders of appellant and would result in serious and irreparable damage to appellant.

Appellees by their amended answer (R. 62-66) admitted that they were enjoined by order of the Circuit Court of Racine County, Wisconsin, from interfering with West Lawn Building and Loan Association, Racine, Wisconsin, and its proposed meeting and conversion; denied notice of the proposed conversion by appellant prior to service of summons and complaint in this cause; denied that appellees had made any attempt to seize and take over the affairs, business, property and assets of appellant or to interfere with or prevent the proposed meeting of appellant's stockholders or had threatened to oust the officers and directors or take possession of the business, assets and operation of building and loan associations of the State of Wisconsin which might attempt conversion into a federal

savings and loan association. However, appellees, by their amended answer (R. 62-66) alleged:

1. That the proposed conversion by appellant as set forth in the complaint was a violation of its charter, by-laws, and the laws of the State of Wisconsin;

2. That under the laws of the State of Wisconsin the Banking Commission was authorized to take possession of the property and business of any building and loan association organized under the laws of the State of Wisconsin which had violated its charter, by-laws or the laws of the State of Wisconsin; and

3. That the taking over of possession of appellant by appellees would not result in any damage to appellant.

Appellees by way of counterclaim (R. 54-60) alleged:

1. That on or about March 31, 1934, appellant through its officers and directors made application, without the consent or authority of the Banking Commission of the State of Wisconsin, to the Federal Home Loan Bank Board for permission to convert itself into a federal savings and loan association under the provisions of Sec. 5 (i) of Home Owners' Loan Act of 1933, as amended by Act of Congress, approved April 27, 1934. Thereafter, as appellees were informed and believe, the said Federal Home Loan Bank Board granted said permission to appellant.

2. That on or about July 20, 1934, appellant mailed to each of its stockholders a notice of a special meeting of stockholders to be held August 20, 1934 for the purpose of voting upon a recommendation and resolution of its Board of Directors that it convert itself into a federal savings and loan association.

3. That the United States of America has no right or power to create federal savings and loan associations; that the provision of Sec. 5 of Home Owners' Loan Act of 1933, as amended, purporting to authorize

the creation of federal savings and loan associations, are unconstitutional in that Congress has no express or implied power to create such federal associations; that the creation of such federal associations is wholly outside the powers vested in Congress by Sec. 8 of Article I of the Constitution, or any other provision of the Constitution of the United States, and is in direct violation of Article X of the Amendments to the Constitution of the United States; that the provisions of Sec. 5 (a) of Home Owners' Loan Act of 1933, as amended, which purport to delegate to the Federal Home Loan Bank Board any power and authority, "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor" is an unconstitutional delegation of legislative power by the Congress of the United States in violation of Sec. 1 of Article I of the Constitution of the United States; that appellant had no right or power to convert itself into a federal savings and loan association; that such conversion would be in violation of its charter and the laws of the State of Wisconsin; that the provisions of Sec. 5 (i) of Home Owners' Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, are void and of no effect and in violation of the Constitution of the United States because Congress has no right or power under the Constitution of the United States to authorize the conversion of a state building and loan association into a federal savings and loan association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion; that said Sec. 5 (i), if construed to permit said conversion without state consent, is unconstitutional in that Congress has no express or implied power to authorize such conversion under the provisions of Sec. 8 of Article I of the Constitution of the United States, or any other pro-

vision of the Constitution of the United States, and is in violation of Article X of the Amendments to the Constitution of the United States; that the provisions of said Sec. 5 (i) would deny to all stockholders of appellant who do not desire the association to convert, the equal protection of the laws and would deprive them of property without due process of law, in violation of Sec. 1 of Article XIV of the Amendments to the Constitution of the United States.

4. That appellant would unlawfully convert itself into a federal savings and loan association unless restrained by the Court from taking any further steps in said conversion; that appellant proposed and intended to accept a charter from the Federal Home Loan Bank Board and to discontinue doing business as a Wisconsin building and loan association under the jurisdiction of the Banking Commission; that appellant intended to transfer all of its assets to said proposed federal association and to issue to its members stock certificates in said federal association in lieu of stock certificates issued by the appellant, all in violation of the laws of the State of Wisconsin and the orders of the Banking Commission of the State of Wisconsin.

Appellees prayed said Circuit Court (R. 54-60) as follows:

"(1) Dismissing the complaint of the plaintiff (appellant) herein upon its merits.

"(2) Declaring that the defendants (appellees) have full power and authority to take possession of the plaintiff (appellant) association under the laws of the State of Wisconsin.

"(3) Restraining and enjoining the plaintiff (appellant) association, its officers, directors, stockholders, agents and employes, from taking any other or further steps in said attempted conversion by said plaintiff (appellant) into a federal savings and loan association.

"(4) And for such other and further relief as may be just and equitable and for the defendants' (appellees') costs and disbursements in this action.

Appellant in its reply (R. 68-72) denied each and every conclusion of law set forth by appellees and further denied that the consent of the Banking Commission of the State of Wisconsin to the conversion of itself into a federal savings and loan association was required or necessary under the provisions of Section 5 (i) of Home Owners' Loan Act of 1933, as amended by Act of Congress approved April 27, 1934.

The case was heard by said Circuit Court upon stipulation by respective counsel (R. 82) that no issue of fact was presented by the pleadings and that the Court might render judgment upon the merits without taking testimony. Said Circuit Court entered judgment on September 12, 1934 in favor of appellant as follows:

"This cause being at issue and coming on for trial before the court, and having been tried before this court, Hon. Chas. L. Aarons, circuit judge presiding, on August 7, 1934, upon the issues of law raised in the pleadings on file herein, and the Court having ordered the entry of judgment as follows:

It is ordered, adjudged and declared:

(1) That the plaintiff association (appellant) has the right and power to convert into a federal savings and loan association, and that the Acts of Congress so providing, are valid and constitutional.

(2) That the defendants (appellees) have no right or authority to take possession of the plaintiff association (appellant) to prevent its conversion into a federal savings and loan association.

(3) That the defendants (appellees), their agents, servants and employees be and they hereby are re-

strained and enjoined from taking possession of the plaintiff association (appellant) or interfering in any way with the proposed conversion of the plaintiff (appellant) into a federal savings and loan association.

(4) That the defendants' (appellees') counterclaim be and the same hereby is dismissed on the merits."

Appellees in the first appeal to the Supreme Court of the State of Wisconsin in this cause assigned as error (R. 100-101) the failure of said Circuit Court to find:

"1. That Congress has no power to incorporate federal savings and loan associations;

"2. Assuming that it has such power, that Congress improperly delegated this power to the Federal Home Loan Bank Board;

"3. That the language of Section 5 (i) of the Home Owners' Loan Act of 1933, as amended, implies necessity of State consent to the proposed conversion of a state building and loan association into a federal savings and loan association; and

"4. That Congress has no power to authorize the conversion of state building and loan associations into federal savings and loan associations without the consent of the State.

"If the Banking Commission is correct in any one of its foregoing contentions, it follows that Wisconsin building and loan associations cannot lawfully convert into federal savings and loan associations and that the Banking Commission is entitled to the relief which it seeks in these actions."

Said Supreme Court reversed the judgment (R. 104-121) and remitted the cause (R. 122) to said Circuit Court with instructions to enter judgment for appellees. Said Circuit Court over objection of appellant, duly filed and pursuant to said remittitur, entered judgment (R. 135-136) as follows:

"This cause having been tried before this court, Hon. Chas. L. Aarons, Circuit Judge presiding on August 7, 1934, and judgment having been rendered for the plaintiff on the 12th day of September, 1934, granting the said plaintiff the relief which it sought in its complaint and dismissing the defendants' counterclaim on its merits; and the defendants having duly appealed from the judgment, and the whole thereof, to the Supreme Court of the State of Wisconsin, by which the said judgment was on the 11th day of December, 1934, wholly reversed and a motion for rehearing denied February 5th, 1935; and the record in this cause having been duly remitted from the Supreme Court to the Circuit Court upon such reversal with directions by said appellate court that judgment be entered in favor of the defendants on their counterclaim; and due notice thereof having been given to the plaintiff as appears by the proofs on file; and due notice for the application of this judgment having been given;

"On motion of J. B. Finnegan, Attorney General, Benjamin Poss and Joseph P. Brazy, of counsel, attorneys for the defendants,

"It is ordered, adjudged and declared:

"(1) That the complaint herein be and the same hereby is dismissed upon its merits.

"(2) That the plaintiff association, its officers, directors, stockholders, agents and employees be and they are hereby restrained and enjoined from taking any other or further steps in the matter of the attempted conversion by said plaintiff association into a federal savings and loan association.

"(3) That the defendants have full power and authority to take possession of the plaintiff association under the laws of the State of Wisconsin."

Appellant thereupon appealed (R. 138) from said judgment to the Supreme Court of the State of Wisconsin on grounds similar to those stated in its pleadings in the

original cause. The Supreme Court of the State of Wisconsin affirmed (R. 147) said judgment of said Circuit Court and by its final order (R. 147) entered on May 1st, 1935, denied motion for re-hearing made by appellant.

The proceedings were docketed in the Supreme Court of the State of Wisconsin in the August Term, 1934, as Cause No. 215.

Said judgment, which enjoined appellant from converting, was rendered notwithstanding that appellant had except as prevented by injunction complied with all the rules and regulations of the Federal Home Loan Bank Board promulgated pursuant to the authority vested in said Board by Section 5 of Home Owners' Loan Act of 1933 (48 Stat. 128, 132), as amended by Act of Congress, approved April 27, 1934 (48 Stat. 643, 645), and had complied with all the provisions and requirements of Section 5 of said Act, as amended, and, in particular, with the requirements of paragraph (i) of Section 5 of said Act of Congress, as amended, which empowered any member of a Federal Home Loan Bank to convert itself into a federal savings and loan association, upon a vote of 51 percentum or more of the votes case at a legal meeting called to consider such action and notwithstanding that appellant was a member of the Federal Home Loan Bank of Chicago, and had been granted permission to so convert, and its stockholders, at a legal meeting called for such purpose, had by a vote of more than 51 percentum of the votes cast, voted to so convert.

By such decision there was drawn in question the validity of a statute of the United States, to-wit, Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by Act of Congress, approved April 27, 1934 (48 Stat. 643, 645), and particularly paragraph (i) of Section 5 of said Act of Congress, as amended, and the decision of the Supreme Court of the State of Wisconsin, was against the validity of such statute of the United States.

There was specifically set up and claimed by appellant certain titles, rights, privileges and immunities under said statute of the United States and said decision denies such titles, rights, privileges and immunities claimed under said statute of the United States.

Said decision held that appellant had no power under the statutes or Constitution of the State of Wisconsin, to divest itself of the corporate character derived from said sovereign State by accepting a charter from any other sovereign government, to-wit, the government of the United States of America, notwithstanding the fact that, under Section 2 of Article VI of the Constitution of the United States, Section 5 of Home Owners' Loan Act of 1933, as amended, is the supreme law of the land. Such holding drew in question the validity of the statutes and the Constitution of the State of Wisconsin on the ground that they were repugnant to the Constitution and laws of the United States and such holding was in favor of their validity.

The Supreme Court of the State of Wisconsin is the highest court in Wisconsin in which a decision in the case may be had.

E.

Cases Believed to Sustain Jurisdiction.

Thomas Murdock et al. v. *The Mayor and Aldermen of Memphis et al.*, 87 U. S. (20 Wall.) 590.

Fox River Paper Company v. *Railroad Commission of Wisconsin*, 274 U. S. 651.

Coleman J. Ward et al. v. *Board of County Commissioners of Love County, Oklahoma*, 253 U. S. 17.

Missouri, Kansas and Texas Railway Company v. *John S. Elliott*, 184 U. S. 530.

State of California v. *Deseret Water, Oil and Irrigation Company*, 243 U. S. 415.

Mallinckrodt Chemical Works v. *State of Missouri*, at the relation of Seebert G. Jones, 238 U. S. 41.

Hall Neilson v. *Clark B. Lagow et al.*, 53 U. S. (12 How.) 98.

Columbia Water Power Company v. *Columbia Electric Street Railway, Light and Power Company*, 172 U. S. 475.

Jacob M. Dickinson v. *George C. Stiles*, 246 U. S. 631.

Dahnke-Walker Milling Company v. *C. T. Bondurant*, 257 U. S. 282.

Samuel H. Leathe v. *Edward L. Thomas*, 207 U. S. 93.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of section 237 of the Judicial Code, as amended by the Act of Congress approved February 13, 1925 (43 Stat. 936; U. S. C., Title 28, section 344) and as further amended by the Act of Congress approved January 31, 1928 (45 Stat. 54; U. S. C. Supp., Title 28, section 861-a) and April 26, 1928 (45 Stat. 466; U. S. C. Supp., Title 28, section 861-b).

Respectfully submitted,

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EMERY J. WOODALL,
LYMAN W. SHERWOOD,
Of Counsel.

[Endorsed:] In the Supreme Court of the United States, —— Term, 1935. Northern Building and Loan Assn., a Corporation, Plaintiff and Appellant, vs. Peter Cleary et al., Defendants and Appellees. Petition for Appeal, Order Allowing Appeal, Assignments of Error and Statement as to Jurisdiction. Filed May 1, 1935. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.